

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re Namenda Direct Purchaser Antitrust  
Litigation

THIS DOCUMENT RELATES TO:  
All Direct Purchaser Actions

Case No. 1:15-cv-07488-CM (RL)  
FILED UNDER SEAL

**DECLARATION OF MICHAEL E. HAMBURGER IN  
SUPPORT OF MEMORANDA OF LAW SUPPORTING  
FOREST'S MOTIONS TO EXCLUDE EXPERT TESTIMONY**

I, Michael E. Hamburger, hereby declare as follows:

1. I am an associate in the law firm of White & Case LLP, counsel for Forest Laboratories, LLC, Forest Laboratories, Inc., Forest Laboratories Holdings, Ltd., and Actavis, plc (collectively "Forest") in the above-captioned matter. I am admitted to practice in the State of New York and before this Court. I submit this declaration in support of the following: Memorandum of Law in Support of Forest's Motion to Exclude Certain Opinions and Proposed Testimony of Prof. Einer Elhauge; Memorandum of Law in Support of Forest's Motion to Exclude Certain Opinions and Proposed Testimony of Dr. Russell Lamb; Memorandum of Law in Support of Forest's Motion to Exclude Certain Opinions and Proposed Testimony of Dr. Ernst Berndt and Dr. Russell Lamb Regarding Forecast Averages; Memorandum of Law in Support of Forest's Motion to Exclude Opinions and Proposed Testimony of Janet K. DeLeon; and Memorandum of Law in Support of Forest's Motion to Exclude Opinions and Proposed Testimony of George W. Johnston, Esq.

2. I have personal knowledge of the facts stated in this declaration and if called as a witness could competently testify to their truth.

**Expert Reports**

3. A true and correct copy of the Revised Expert Report of Prof. Einer Elhauge, dated Sept. 20, 2017 (“Elhauge Rep.”), is attached as **Exhibit 1**.

4. A true and correct copy of the Amended Expert Report, Dr. Russell L. Lamb, dated Sept. 20, 2017 (“Lamb Rep.”), is attached as **Exhibit 2**.

5. A true and correct copy of the Amended Expert Reply Report, Dr. Russell L. Lamb, dated Nov. 9, 2017 (“Lamb Reply”), is attached as **Exhibit 3**.

6. A true and correct copy of the Expert Report of Philip Green, dated Oct. 9, 2017, is attached as **Exhibit 4**.

7. A true and correct copy of the Expert Report of Lona Fowdur, Ph.D., dated Oct. 9, 2017 (“Fowdur Rep.”), is attached as **Exhibit 5**.

8. A true and correct copy of the Expert Report of Pierre-Yves Cremieux, dated Oct. 9, 2017 (“Cremieux Rep.”), is attached as **Exhibit 6**.

9. A true and correct copy of the Expert Report of Ernst R. Berndt, Ph.D., dated Sept. 15, 2017 (“Berndt Rep.”), is attached as **Exhibit 7**.

10. A true and correct copy of the Reply Expert Report of Ernst R. Berndt, Ph.D., dated Oct. 25, 2017 (“Berndt Reply”), is attached as **Exhibit 8**.

11. A true and correct copy of the Amended Reply Expert Report of Ernst R. Berndt, Ph.D., dated Nov. 8, 2017 (“Berndt Am. Reply”), is attached as **Exhibit 9**.

12. A true and correct copy of the Expert Report of Janet K. DeLeon, dated Sept. 15, 2017 (“DeLeon Rep.”), is attached as **Exhibit 10**.

13. A true and correct copy of the Expert Supplemental Report of Janet K. DeLeon, dated Oct. 23, 2017 (“DeLeon Suppl. Rep.”), is attached as **Exhibit 11**.

14. A true and correct copy of the Expert Report of George W. Johnston, Esq., dated Sept. 15, 2017 (“Johnston Rep.”), is attached as **Exhibit 12**.

15. A true and correct copy of the Expert Report of Roderick McKelvie, dated Oct. 9, 2017 (“McKelvie Rep.”), is attached as **Exhibit 13**.

**Deposition Transcript Excerpts**

16. A true and correct copy of excerpts of the deposition transcript of Prof. Einer Elhauge, dated Sept. 29, 2017 (“Elhauge Dep. Tr. I”), is attached as **Exhibit 14**.

17. A true and correct copy of excerpts of the deposition transcript of Prof. Einer Elhauge, dated Nov. 10, 2017 (“Elhauge Dep. Tr. II”), is attached as **Exhibit 15**.

18. A true and correct copy of excerpts of the deposition transcript of Seth Silber (Mylan), dated Aug. 3, 2017, is attached as **Exhibit 16**.

19. A true and correct copy of excerpts of the deposition transcript of Eric Agovino (Forest), dated Sept. 12, 2017, is attached as **Exhibit 17**.

20. A true and correct copy of excerpts of the deposition transcript of Charles Ryan (Forest), dated Nov. 7, 2017, is attached as **Exhibit 18**.

21. A true and correct copy of excerpts of the deposition transcript of Dr. Russell Lamb, dated Oct. 6, 2017 (“Lamb Dep. Tr. I”), is attached as **Exhibit 19**.

22. A true and correct copy of excerpts of the deposition transcript of Dr. Russell Lamb, dated Nov. 10, 2017 (“Lamb Dep. Tr. II”), is attached as **Exhibit 20**.

23. A true and correct copy of excerpts of the deposition transcript of Jim Benton (Smith Drug), dated July 19, 2017, is attached as **Exhibit 21**.

24. A true and correct copy of excerpts of the deposition transcript of Lawrence Doud (Rochester Drug Co.), dated June 27, 2017, is attached as **Exhibit 22**.

25. A true and correct copy of excerpts of the deposition transcript of Ernst Berndt, dated Nov. 2, 2017 (“Berndt Dep.”), is attached as **Exhibit 23**.

26. A true and correct copy of excerpts of the deposition transcript of Julie Snyder, dated Oct. 11, 2017 (“Snyder Dep.”), is attached as **Exhibit 24**.

27. A true and correct copy of excerpts of the deposition transcript of Janet K. DeLeon, dated Oct. 26, 2017 (“DeLeon Dep.”), is attached as **Exhibit 25**.

28. A true and correct copy of excerpts of the deposition transcript of Katrina Curia (Mylan), dated Aug. 3, 2017, is attached as **Exhibit 26**.

29. A true and correct copy of excerpts of the deposition transcript of Jinping McCormick (DRL), dated July 20, 2017, is attached as **Exhibit 27**.

30. A true and correct copy of excerpts of the deposition transcript of Kapil Gupta (Amneal), dated July 27, 2017, is attached as **Exhibit 28**.

31. A true and correct copy of excerpts of the deposition transcript of Bharati Nadkarni (Sun), dated Aug. 31, 2017, is attached as **Exhibit 29**.

32. A true and correct copy of excerpts of the deposition transcript of Maureen Cavanaugh (Teva), dated July 18, 2017, is attached as **Exhibit 30**.

33. A true and correct copy of excerpts of the deposition transcript of George Johnston, dated Oct. 26, 2017 (“Johnston Dep.”), is attached as **Exhibit 31**.

#### **Documents**

34. A true and correct copy of the Settlement Agreement between the Attorney General of the State of New York, Allergan plc, and Forest Laboratories, LLC (“Settlement Agreement”), dated Nov. 24, 2015, is attached as **Exhibit 32**.

35. A true and correct copy of FRX-AT-01603645 is attached as **Exhibit 33**.

36. A true and correct copy of excerpts of FRX-AT-01750551 is attached as Exhibit  
34.
37. A true and correct copy of FRX-AT-01595859 is attached as Exhibit 35.
38. A true and correct copy of FRX-AT-01671051 is attached as Exhibit 36.
39. A true and correct copy of FRX-AT-01618023 is attached as Exhibit 37.
40. A true and correct copy of MYLMEMA\_000028 is attached as Exhibit 38.
41. A true and correct copy of LPI-NMDA-00004618 is attached as Exhibit 39.
42. A true and correct copy of Mylan's Proposed Findings of Fact and Conclusions of  
Law, dated February 26, 2010, is attached as Exhibit 40.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of November, 2017, in New York, New York.

  
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Michael E. Hamburger